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Birch Estates Condominiums  
6440 S. Wasatch Blvd. #200  
Salt Lake City, UT 84121

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
BIRCH ESTATES CONDOS LLC  
BY: KLD, DEPUTY - WI 67 P. 68p.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
OF THE  
BIRCH ESTATES CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS OF THE BIRCH ESTATES CONDOMINIUMS (this "Declaration") is made as of October 29, 2007, by BIRCH ESTATES CONDOMINIUMS, LLC, a Utah limited liability company ("Declarant").

RECITALS

A. Declarant owns certain land located in the Salt Lake County, Utah, which land is more particularly described on Exhibit A attached hereto, together with buildings, structures, and other improvements located thereon.

B. Declarant desires to create a condominium project on such land pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Sections 57-8-1 through 57-8-38, as the same may be amended from time to time (the "Condominium Act"). The condominium project shall be known as the "Birch Estates Condominiums".

C. Declarant deems it necessary and desirable to subject such land, and all improvements now or hereafter constructed on such land, to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

NOW, THEREFORE, it is hereby declared that the Property (as defined below) shall be held, sold, conveyed, leased, rented, encumbered and used, subject to this Declaration and its covenants, restrictions, reservations, easements, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns and all Owners (as defined below) of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisee and assigns, all as set forth herein.

DECLARATION

**ARTICLE 1**

## DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

1.1 "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association which have been or shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

1.2 "**Association**" shall mean and refer to the Quail Lane Condominiums Association, a Utah nonprofit corporation.

1.3 "**Bylaws**" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.4 "**Common Areas**" shall mean and refer to that part of the Property which is not included within the Units, including (a) all roadways and walkways within the Project, (b) all landscaped areas, (c) any clubhouse or related amenities and all improvements other than utility lines now or hereafter constructed or located thereon. The Common Areas are further shown on the Plat.

1.5 "**Common Expense Fund**" shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expenses Fund.

1.6 "**Common Expenses**" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association, as described in Article V hereof and which determine the assessments made to Owners.

1.7 "**Common Wall**" shall mean any wall, floor, or ceiling, which is common to and separates any two or more attached Condominiums, but which does not separate the interior portions of any Condominium with any Condominium Building Exteriors.

1.8 "**Condominium**" shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements associated with that Condominium which are used in conjunction with such residence.

1.9 "**Condominium Building**" shall mean and refer to a building or structure containing two or more Units, constituting a portion of the Project.

1.10 "**Condominium Building Exteriors**" shall mean and refer to those portions of the Condominium Buildings which are open to the elements such as roofs, exterior walls, exterior doors, footings, foundations, basement walls and window wells.

1.11 “**Declaration**” shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, and Reservation of Easement of the Quail Lane Condominiums, as the same may hereafter be modified, amended and supplemented.

1.12 “**Declarant**” shall mean and refer to Quail Lane Condominiums, LLC, a Utah limited liability company, and/or any successor thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

1.13 “**Eligible Mortgagee**” shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XII of this Declaration.

1.14 “**FNMA**” shall mean and refer to the Federal National Mortgage Association (or any successor association).

1.15 “**First Mortgage**” means a consensual lien granted by the Owner which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.16 “**First Mortgagee**” means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

1.17 “**Limited Common Areas**” if any are designated, shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project.

1.18 “**Management Committee**” shall mean and refer to the governing management committee of the Association which shall be appointed or elected in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

1.19 “**Manager**” shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

1.20 “**Member**” shall mean and refer to every person who holds membership in the Association.

1.21 “**Mortgage**” shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.22 “**Mortgagee**” shall mean a beneficiary of a Mortgage as well as named Mortgagee.

1.23 “**Owner**” shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County

Recorder in Salt Lake County, State of Utah. "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

1.24 "**Percentage Ownership Interest**" shall mean the undivided percentage ownership interest in all of the Common Areas and common facilities of the Project owned by each Unit Owner, which ownership interest shall be allocated to such Unit Owner based on a fraction, the numerator of which shall be the square footage of such Owner's Unit, and the denominator of which shall be the total square footage of all Units within the Project. The Percentage Owner Interest for each Unit is specified on Exhibit C attached hereto and incorporated herein by this reference, and as shown on the Plat. The Percentage Ownership Interest for each Unit as contained herein shall be deemed conclusive and shall not be re-measured or adjusted in any way.

1.25 "**Person**" shall mean an individual or entity.

1.26 "**Plat**" shall mean and refer to the condominium map for the Birch Estates Condominiums, recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

1.27 "**Project**" shall mean and refer to the Property, all improvements thereon, and the development (or future development) and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

1.28 "**Property**" shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration as set forth in Article II of this Declaration.

1.29 "**Unit**" shall mean all elements of individual ownership of each of the separately numbered and individually described areas of the Project as designated on the Plat, including: (a) the Condominium, (b) ownership of the real property area located between any exterior walls of the Condominium and any Common Walls (as recorded on the Plat), including exclusive use of any Limited Common Areas associated with that Condominium, (c) nonexclusive use of the remainder of the Common Area, and (d) all rights of membership in the Association.

1.30 "**Voting Rights**" shall mean the number of voting rights attributable to a Member of the Association, which voting rights of such Member shall be equal to the Percentage Ownership Interest allocated to the Unit owned by such Member. The Voting Rights allocated to all Members of the Association shall cumulatively total one hundred (100) Voting Rights.

## ARTICLE 2

### PROPERTY DESCRIPTION

The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration and the Condominium

Act consists of real property situated in Salt Lake County, State of Utah, as more specifically described in Exhibit A, attached hereto, and as depicted on the Plat attached hereto as Exhibit B.

The Project shall consist of five Condominium Buildings containing twenty nine (29) residential Units. At Declarant's discretion, all of the Condominium Buildings shall have two stories and shall be constructed primarily of wood, brick, siding, stucco, stone, and/or any other building materials determined by Declarant. The Unit numbers shall range from 1-29 or as otherwise depicted and described on the Plat. The dimensions and measurements for the Units are described on the Plat. The units shall have a main level and an upper level. As described more fully below, and as depicted on the Plat, the Common Areas shall consist of sidewalks, open spaces, parking areas, and other amenities.

### ARTICLE 3

#### THE ASSOCIATION

3.1 **Membership**. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by such owner. Each Membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles and Bylaws and other rules governing the Project and other books records and financial statements of the Association. The term "available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

3.2 **Management Committee**. The Declarant shall have the sole and exclusive right to appoint and remove all Management Committee members consistent with this Declaration, the Articles, and Bylaws, until the first to occur of: (i) three (3) years from the date on which the first Unit in the Project is conveyed by Declarant to a person(s) or entity(ies) not affiliated with Declarant; or (ii) the date on which the nineteenth (19th) Unit is conveyed by Declarant to a person(s) or entity(ies) not affiliated with Declarant. Thereafter, the responsibility for electing the Management Committee of the Association shall be turned over to the Members of the Association.

3.2.1 **Number and Election of Members**. The Management Committee shall consist of three (3) members. After Declarant's right to appoint the members of the Management

Committee terminates as set forth above, the Owners of the Units shall elect the members of such committee. Only Owners that are current in the payment of all assessments (or agents or officers of such Owners) at the time of such Owners' election may serve as members of the Management Committee. Commencing at the first annual meeting after the Declarant's right to appoint the members of the Management Committee terminates, the Owner's shall elect successors to the Management Committee members appointed by Declarant. At such annual meeting in which the Owners elect successors to Declarant's appointed Management Committee members, two (2) of the Management Committee members shall be elected to serve two (2) year terms and one (1) of the Management Committee members shall be elected to serve a one (1) year term. Thereafter, all members of the Management Committee will each serve as a member for a term of two (2) years; provided, however, such members shall continue to hold office until a replacement or successor to such member is elected. Subject to the terms and conditions of set forth below, each member of the Management Committee shall be elected at succeeding annual meetings at the expiration of such member's term.

### 3.2.2 Powers of the Management Committee.

(i) Except as provided in this Declaration and the Bylaws, the Management Committee may act on behalf of the Association in all instances.

(ii) The Management Committee may not act on behalf of the Association to: (a) amend this Declaration; (b) terminate the Association, this Declaration or the Project; (c) elect members to the Management Committee (except the Management Committee may appoint members as specifically provided in Section 2(D) of this Article); or (d) determine the qualifications, powers and duties, or terms of office, of members of the Management Committee.

(iii) Any document or instrument that requires the signature of the Management Committee shall be signed by at least two (2) members, which shall thereafter bind the Association.

### 3.2.3 Removal or Termination of Members of the Management Committee.

Members of the Management Committee may be removed or terminated as members of such committee under any of the following circumstances:

(i) A member shall automatically be terminated as a member of the Management Committee if such member resigns, dies or ceases to be an Owner of any portion of any Unit (whether through (a) a sale, transfer, or conveyance of such member's right, title and interest, all of such member's ownership interest, (b) a foreclosure, or sale in lieu of foreclosure, by any Mortgagee, or (c) or any other means);

(ii) A member may be removed as a member of the Management Committee: (a) upon the vote of a majority of the other members of the Management Committee if such member fails to pay any assessment due from such Owner within the time periods set forth in this Declaration for payment of same; (b) upon the vote of a majority of the other members of the Management Committee if such member misses more than three (3) consecutive regularly scheduled meetings of the Management Committee (of which meetings such member

received proper notice); (c) at any time upon a vote by the Owners holding a majority of the Voting Rights within the Association.

3.2.4 Replacement of Members of the Management Committee. A vacancy on the Management Committee created by the termination, removal, resignation or death of a member of such committee shall be filled by an Owner that otherwise meets the requirements set forth in Section 2(A) of this Article that is appointed by a majority vote of the other members of the Management Committee; provided, however, that such new member of the Management Committee shall only serve until the next annual meeting of the Owners at which time there shall be an election for a new member of the Management Committee.

3.2.5 Management Committee Liability. No member of the Management Committee shall be liable to the Owners for any mistake in judgment, for negligence, or on other grounds, except for such member's own individual and willful misconduct or bad faith. The Owners and the Association shall indemnify and hold harmless each member of the Management Committee from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Association or Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of an Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Owner's Interest in Common Elements.

3.3 Votes. Each Member shall be entitled to cast the Voting Rights appurtenant to his or her Unit, which Voting Rights shall be equal to such Member's Percentage Ownership Interest. For example, the Owner of Unit #2 shall be permitted to cast 3.448 (based on the Percentage Ownership Interest for Unit #2) of the total 100 Voting Rights allocated among all Unit Owners within the Association. No changes can be made to the allocation of Voting Rights that are assigned to a Unit without the unanimous consent of all Unit Owners. The number of Voting Rights appurtenant to each Unit shall be permanent, and shall not change in the event an Owner modifies a Condominium to increase or decrease the size of his Unit relative to other Units. No Voting Rights of any one (1) Unit may be split for purposes of any voting. For all votes taken by the Members of any kind (except with respect to votes by members of the Management Committee in connection with voting that occurs within the Management Committee and which is not conducted by or for the general Members of the Association), the Voting Rights for such Member shall be determined based on such Member's Percentage Ownership Interest. In the event that there is more than one (1) Owner of a particular Unit, the Voting Rights relating to such Unit shall be exercised together with no division as such Owners may determine among themselves. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the Voting Rights attributable to the Unit concerned, unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the Voting Rights involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4 Amplification. The provisions of this Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

## ARTICLE 4

### PROPERTY RIGHTS IN COMMON AREAS AND UNITS

4.1 **Easement of Enjoyment.** Each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in such Member's Unit.

4.2 **Limited Common Areas.** The Limited Common Areas shall include the following:

A. Certain parking stalls that are identified as Limited Common Areas on the Plat, which parking areas shall be designated by the Declarant (or if Declarant does not designate same during its period of control, then the Management Committee) for the benefit and use of specific Units, and upon such designation such parking areas cannot be changed or re-designated. One covered parking stall shall be allocated for the exclusive use of each Unit. Upon such allocation or designation of a parking stall for a specific Unit, such parking stall shall be an appurtenance to such Unit and shall run with the land. The exclusive use rights of such parking stall shall not be separated or alienated from the Unit to which it is allocated and such parking stall cannot be transferred or conveyed without a corresponding transfer or conveyance of the Unit to the same person(s) or entity(ies). In the event a Unit is transferred or conveyed, the right to use the parking area designated for such Unit shall automatically transfer with such Unit. Notwithstanding the foregoing, the rights and benefits associated with a parking area which has been designated for a specific Unit may be traded between Unit Owners by written agreement provided (i) a copy of any such agreement (fully executed) is provided to the Association for its records, and (ii) each Unit shall have no more and no less than one covered parking stall. In addition, Owners may rent, their respective covered parking stalls provided (i) any such lease or rental agreement shall automatically terminate upon any sale or transfer of the Unit so that the new Owner receives its Unit and designated parking stall unencumbered by such lease or rental agreement, and (ii) such lease or rental agreement must be with another Owner or occupant of a Unit within the Project (such that no third parties, other than actual Owners or occupants or Units within the Project can lease or rent any parking stalls within the Project).

B. Certain patio or deck areas that are identified as Limited Common Areas on the Plat, which patio areas are hereby designated exclusively for the use of the Unit directly adjacent to such patio area which has direct access to such patio area through such Unit. The rights to use such patio areas shall be an appurtenance to the corresponding Unit and shall run with the land. The exclusive use rights of such patio area shall not be separated or alienated from the Unit to which it is herein allocated and such patio area cannot be transferred or conveyed without a corresponding transfer or conveyance of the Unit to the same person(s) or entity(ies).



In the event a Unit is transferred or conveyed, the right to use the patio area designated for such Unit shall automatically transfer with such Unit.

C. Certain stairs and walkways within, or attached to, the Condominium Buildings that are identified as Limited Common Areas on the Plat, which stairs and walkways are hereby designated exclusively for the in-common use if the Units within the Condominium Building that are adjacent to such stairs and walkways. The rights to use such stairs and walkways shall be an appurtenance to the corresponding Units and shall run with the land. The exclusive use rights of such stairs and walkways shall not be separated or alienated from the Units to which it is herein allocated and such patio area cannot be transferred or conveyed without a corresponding transfer or conveyance of the applicable Unit to the same person(s) or entity(ies). In the event a Unit is transferred or conveyed, the right to use such stairs and walkways designated for such Unit shall automatically transfer with such Unit. Notwithstanding the foregoing, guests, invitees, and other Owners shall have the rights to use all stairs and walkways within the Project for ingress and egress to and from all Units throughout the Project.

4.3 **Easements for Encroachments.** In the event the construction, reconstruction, repair, shining, settlement or any other movement of any portion of the improvements causes any part of a Condominium built in substantial accord with the boundaries for such Condominium as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit or Condominium for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. There is also hereby erected an easement for any encroachment by any roof overhang upon an adjoining Unit or any part of the Common Areas.

4.4 **Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association to suspend a Member's voting right in the Association and a Member's right to use of any recreational facilities included in the Common Areas for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the Provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

B. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

C. The right of Salt Lake County, or any other governmental or quasi-governmental body having jurisdiction over the Property to access, including rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal service.

4.5 **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

“Unit No. \_\_\_\_\_ Building \_\_\_\_\_ of the Birch Estates Condominiums, together with all improvements thereon, as said Unit is identified in the Plat of said development recorded in the Recorder’s Office of Salt Lake County, State of Utah as Entry No. \_\_\_\_\_, on \_\_\_\_\_, 200\_\_\_\_, and in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements of the Birch Estates Condominiums, recorded in the Recorder’s Office of Salt Lake County, State of Utah as Entry No. \_\_\_\_\_, on \_\_\_\_\_, 200\_\_\_\_, together with (i) an undivided \_\_\_\_\_ ownership interest, as a tenant in common with all other owners of Units with the Birch Estates Condominiums, in all common areas and common facilities of the Birch Estates Condominiums, and (ii) all rights, benefits, and easements described, and provided for, in said Declaration of Covenants, Conditions, Restrictions and Reservation of Easements.”

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

4.6 **Transfer of Title.** Each Owner shall be entitled to an undivided interest in the Common Areas and facilities in the amount of the Percentage Ownership Interest allocated to such Owner’s Unit on Exhibit C. No Percentage Ownership Interest in the Common Areas or facilities shall be separated from the Units; and, even though not specifically mentioned in the instrument of transfer the ownership interest shall automatically accompany the transfer of interest in the Unit to which it relates.

4.7 **Common Walls.** Some or all of the Condominiums share at least one Common Wall with at least one other Condominium. The Owners of the Condominiums sharing these Common Walls shall be deemed to own one-half (1/2) of the wall nearest his/her Condominium, and shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. Except for the sheet rock and the wall finishes (including paint, wallpaper, plaster, or other finishes) which shall be maintained by the Owner of the applicable Condominium, any such Common Wall shall be deemed a structural component of the building in which it is located, and shall therefore be maintained by the Association as Limited Common Areas (designated for the benefit of the Condominiums within the same Condominium Building); provided, however, such maintenance obligations (like all other maintenance obligations of the Association herein) are subject to the Owner’s responsibility to repair damage caused by the negligence or willful misconduct of such Owner (or of such Owner’s invitees, guests, or tenants).

Owners may not undertake any change to the composition of their respective side of the Common Wall without the express prior written consent of the Association and any governmental agency or department with jurisdiction and responsibility over building, development, construction, building permits, and/or the requested changes (the “Governmental Building Department”). By way of illustration, replacing the sheet rock of the Common Wall

with any other material of any kind shall be considered a change in the composition of the Common Wall, and is strictly prohibited without the express prior written consent of the Governmental Building Department. Painting the Common Wall or installing wall hangings are not significant changes to the Common Walls that require prior approval.

## ARTICLE 5

### ASSESSMENTS

5.1 **Agreement to Pay Assessments.** The Declarant for each Unit owned by it within the Project and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all constructed Units shall be allocated the then applicable assessments upon conveyance of the first Unit. No assessment for a Unit owned by the Declarant or developer shall be made until the Unit has been issued a final certificate of occupancy.

A. The Declarant shall set the initial annual assessment for each of the Units.

B. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

C. From and after January 1 of the year immediately following the conveyance of the first Unit, the maximum annual assessment may be increased by more than fifteen percent (15%) above the maximum assessment for the previous year only by an affirmative vote of Owners holding at least sixty-seven percent (67%) of the Voting Rights within the Association.

D. The Management Committee may fix the annual assessment at any amount which does not exceed the maximum amount which in their judgment will cover the expenses to be paid for the ensuing year, plus a reasonable reserve amount.

5.2 **Annual Assessments.** Annual assessments shall be computed and assessed against all Units in the Project as follows:

A. **Common Expenses.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building Exteriors, and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Condominium Building Exteriors; landscaping; wages of Association

employees, including fees for a Manager; repairs and replacements of window well sump pumps (if necessary); utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repair, and replacement of those Common Areas and Condominium Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2.A. shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund. Notwithstanding any language to the contrary herein, Common Expenses may, at the Management Committee's option, include expenses for the maintenance and operation of the Limited Common Areas; provided however, that the Management Committee may, at its option, either allocate the costs and expenses of such maintenance and operation of the Limited Common Areas as a cost to all Units in the proportions set forth in Section 2(B) of this Article, or allocate the costs and expenses of such maintenance and operation of such Limited Common Areas in a reasonably equitable manner to only those Units that receive benefit or use from such Limited Common Areas.

B. Apportionment. Common Expenses and/or any assessments described in this Article V shall be apportioned among and assessed to all Units and their Owners based on the Percentage Ownership Interest allocated to such Owner's Unit. Subject to the limitations described in Article V, Section 1, the Declarant shall be liable for the amount of any assessments against Units owned by it or the Developer when it is determined expenses contemplated to be paid begin to accrue. Payments related to Common Areas and facilities shall not be assessed before they are built, except with the approval of the majority of Owners and, to the extent Declarant is an Owner of any Unit, the Declarant.

C. Annual Budget. Annual assessment shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1 of each year thereafter, the Management Committee shall prepare and furnish to each Owner, or cause to be prepared and furnished to each owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operation period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

D. Notice and Payment. Except with respect to the first fiscal year, the Management Committee shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Management Committee, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be

based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Management Committee not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment becomes due until paid. The Management Committee shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days or the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Management Committee not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Management Committee to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such assessment or any other assessment.

E. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Management Committee may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the vote therein specified shall be unnecessary.

5.3 Special Assessments. In addition to the annual assessments authorized by this Article, the Management Committee may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of Owner's holding more than fifty percent (50%) of the Voting Rights within the Association, special assessments, payable over such periods as the Management Committee may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned among and assessed to all Units and their Owners based on the Percentage Ownership Interest allocated to such Owner's Unit. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Management Committee not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. In connection with any such special assessment, if the Declarant is only obligated to pay twenty-five percent (25%) of the annual assessment attributable to Units it owns pursuant to Section 4 below, it shall only be required to pay twenty-five percent (25%) of the special assessment otherwise attributable to each such Unit. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of annual assessments for the aforesaid purposes.

5.4 **Rate of Assessment.** The amount of any annual or special assessment against each Unit shall be fixed at a rate based on the Percentage Ownership Interest allocated to each Unit, except that Declarant shall pay only twenty-five percent (25%) of the annual assessment attributable to each Unit which it owns until the first to occur of any of the following: (i) Declarant conveys such Unit to a third-party purchaser, (ii) Declarant leases or rents such Unit to any third party, or (iii) Declarant allows occupancy of such Unit by any residential occupant. If the Declarant ceases to qualify for the reduced twenty-five (25%) rate during the period to which an annual assessment is attributable, the assessment attributable to the membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Management Committee, unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

5.5 **Notice and Quorum for Any Action Authorized Under Sections 1 and 3.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Owners no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or proxies of Owners holding more than fifty percent (50%) of the total Voting Rights within the Association (exclusive of Owners with suspended voting rights) shall be required in order to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Notwithstanding any language to the contrary in this Declaration, whenever a meeting is called in which a vote will take place and the action for which the vote is taking place requires a certain amount of Voting Rights of the total Voting Rights within the Association in order to perform such action, but not all Owners are present at such meeting, then provided (i) proper notice of such meeting was given to all Owners, and (ii) a quorum of Owners (as described above) is present at such meeting, such vote or action shall be deemed passed by the Association if the requisite percentage of the total Voting Rights of all the present Owners that constitute the quorum for the applicable meeting affirmatively pass such vote or action. In the event no specific requisite percentage of total Voting Rights is set forth in this Declaration relating to an action requiring a vote of the Owners, then such action must pass by an affirmative vote of more than fifty percent (50%) of the Voting Rights of all the present Owners that constitute the quorum for the applicable meeting in which the vote takes place.

5.6 **Lien for Assessments.** All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article VI, together with penalties and interest thereon as provided herein, shall be secured by a Lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Management Committee may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such

lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

5.7 **Personal Obligation of Owner.** The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

5.8 **Personal Liability of Purchaser.** The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 7 shall, consistent with 57-8-20 of the Utah Code Annotated 1953, constitute a lien on the interest of the Owner upon filing with the County Recorder of Salt Lake County and shall be entitled to the priorities and subject to the conditions outlined in the Statute cited above. A lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit. In case of foreclosure, the Owner shall pay a reasonable rental for the Unit, and the plaintiff in a foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

5.9 **Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas, Limited Common Areas, and Condominium Building Exteriors the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

5.10 **Evidence of Payment of Annual and Special Assessments.** Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with

respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

## ARTICLE 6

### OPERATION AND MAINTENANCE

6.1 **Maintenance of Condominiums.** Each Condominium and/or Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Condominium or Unit. The Association shall have no obligation regarding maintenance or care of Condominiums or Units except as set forth in this Article VI or elsewhere in this Declaration.

6.2 **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of all Common Areas, Limited Common Areas, and Condominium Building Exteriors as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund. Maintenance of the Common Areas, Limited Common Areas, and Condominium Building Exteriors shall include: paint, repair, maintain, replace and care for: parking areas, landscaped areas, green space, sidewalks, curbing, covered parking stalls, roofs, gutters, downspouts, foundations, window wells, sump pumps, fences, exterior building surfaces, exterior door and other exterior improvements to the Condominium Buildings and the Project in general. Such exterior maintenance shall include glass surfaces, window screens and patios included on any Unit. The Association shall have the right of entry to any Condominium to perform emergency repairs or do other work necessary for maintenance of the Condominium Building Exteriors, the Common Walls, or to install any amenities that may be approved by the majority of the Members of the Association.

In the event that the need for maintenance, replacement, or repair of any Common Areas, Limited Common Areas, or Condominium Building Exteriors is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the family, guests, tenants or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Unit is subject.

6.3 **Professional Management.** The Association may carry out through the Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant control of the appointment of the Management Committee, as described in Section 2 of Article III, may be terminated by the Association without cause at any time after termination of such control. The above term and termination provisions shall not apply to any other types of service contracts.



6.4 **Utilities.** The Owner shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. To the extent utility services are not separately metered, all costs and expenses associated with such utility services shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner; provided, however, in the event a certain meter (or meters) services only certain or specific groups of Units, the Management Committee may, at its option, allocate the costs and expenses of such utility services among the applicable Units connected to such meter.

6.5 **Garbage.** The Management Committee may elect to have garbage or refuse disposed of by a private waste disposal service, in which event each Owner hereby agrees that all deliveries and all trash removal services, and other such services to that Owner or its Unit, shall be effected at a location or locations designated by the Management Committee from time to time for such purposes. Unless otherwise directed by the Association, Owners of all Units and their guests and/or other occupants shall place all trash and other waste from the Units in receptacles which are located in the Project and designated for that purpose. All costs and expenses associated with the maintenance of such garbage service shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner.

6.6 **Cable.** The Management Committee may elect to have cable service provided to the entire Project by the same service provider by entering into a cable service agreement, in which event each Owner hereby agrees to be subject to such agreement. In the event such an agreement exists, all costs and expenses associated with the cable service shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner.

6.7 **Insurance.** The Association shall at all times maintain in force insurance meeting the following requirements:

6.7.1 **Hazard Insurance.** A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; all Condominium Buildings, including all Condominiums (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if

the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. However, for losses related to individual Condominiums that are covered by such a policy, the deductible related to each individual Condominium shall be not more than Five Thousand Dollars (\$5,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

6.7.2 Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Buildings, any machinery and equipment that are not part of a Condominium Building and all Common Areas within the Project (hereafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Condominium Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(i) The name of the insured under each policy required to be maintained by the foregoing Subsections A and B shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or insurance trustee), as a trustee for each owner and each such owner's mortgagee. Each owner and each such owner's mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each owner and mortgagee upon request.

(ii) Each policy required to be maintained by the foregoing Subsections A and B shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the project is located. If FNMA is a holder of one or more mortgagees on units within the project, such mortgage clause shall name FNMA or FNMA's servicer of such mortgages as mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association, and to each mortgagee listed as a scheduled holder of a mortgage in the policy.

(iii) Each policy required to be maintained by the foregoing Subsections A and B, shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against owners individually; the insurance is not prejudiced by any act or neglect of individual owners which is not in the control of such owners collectively; and the policy is primary in the event the owner has other insurance covering the same loss.

(iv) Each policy required to be maintained by the foregoing Subsection A shall also contain or provide the following: (1) "Inflation Guard Endorsement," if available; and (2) "Building Ordinance or Law Endorsement," if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction).

**6.7.3 Insurance or Bonds for Employee Dishonesty.** The Association shall at all times maintain in force insurance or "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association, whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide insurance or "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of insurance or fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of insurance or bond coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Management Committee must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such insurance or bonds be less than the sum equal to three months' aggregate assessments on all Units. The insurance or bonds required shall meet the following additional requirements: (1) either shall be in the name of the Association as obligee; (2) the insurance or bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions; (3) the premiums on all insurance or bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the insurance or bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

6.7.4 Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Limited Common Areas, Condominium Building Exteriors, public ways in the Project, and all other areas of the Project that are under the Association supervision. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and/or Condominium Building Exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

6.7.5 Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association authorized representatives, including any trustee with whom the Association may enter into any Insurance Trust Agreement of any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections A,B,C, and D shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a "A" general policyholder's rating or a financial performance index of "VIII" or better in the Best's Key Rating Guide. No such policy shall be maintained where: (1) under the term of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors,

policyholders, or Members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, an Owner, or FNMA) from collecting insurance proceeds. The provisions of this Section E, and of the foregoing sections A, B, C, and D shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

6.7.6 Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

## ARTICLE 7

### DAMAGE OR DESTRUCTION

7.1 Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association, except as otherwise provided in this Declaration.

7.2 Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Condominium and the Common Areas having substantially the same vertical and horizontal boundaries as before.

7.3 Procedure. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

7.3.1 Notice to First Mortgagee. The Association shall give timely written notice to any holder of any First Mortgage on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Condominium subject to such First Mortgage.

7.3.2 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

7.3.3 Sufficient Insurance. If the proceeds of the insurance maintained by the Association is equal to or exceeds the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

7.3.4 Insufficient Insurance – Less than Fifty Percent (50%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if less than fifty percent (50%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

7.3.5 Insufficient Insurance – Fifty (50%) or More Destruction. If (i) the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and (ii) if fifty percent (50%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners holding at least seventy-five percent (75%) of the Voting Rights within the Association vote to carry out such repair and reconstruction actions.

However, if Owners holding at least seventy-five percent (75%) of the Voting Rights within the Association fail to vote to repair and reconstruct the Project, as described in the immediately preceding paragraph, or if they elect to terminate the Project, and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) the Project shall be deemed to be owned in common by the Owners;

(ii) each Owner shall own an undivided interest in the Project equal to such Owner's Percentage Ownership Interest;

(iii) any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project

owned by such Owner. The division of funds shall be based on the fair market value of the Units and Condominiums immediately prior to the damage or destruction, and the Owners shall divide said funds upon the relative value of the Units and Condominiums prior to the damage or destruction.

7.3.6 Priority. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

7.4 Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit, including the Condominium and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

7.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association, and any amounts received from assessments made pursuant to Section 3.D of this Article VII shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners based on the Owner's Percentage Ownership Interest.

7.6 Amendment of Article. Declarant shall have the authority to amend or modify this Article VII as it deems appropriate until nineteen (19) Units in the Project have been built and sold. However, once nineteen (19) Units in the Project have been built and are sold, this Article VII shall not be amended, unless Owners holding at least seventy-five percent (75%) of the Voting Rights within the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Management Committee of the Association and recorded in accordance with the provisions of this Declaration.

## ARTICLE 8

### CONDEMNATION

8.1 Condemnation. If at any time, or from time to time, all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a

taking by power of eminent domain. If any Unit or portion thereof, or the Common Areas or any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by a condemning authority, the Management Committee shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

8.2 **Proceeds**. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "Condemnation Award") shall be made payable to the Association and shall be distributed by the Management Committee, on behalf of the Association as herein provided.

8.3 **Complete Taking**. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units and Condominiums immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

8.4 **Partial Taking**. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

8.4.1 **Allocation of Award**. As soon as practicable, the Management Committee shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amount and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) based on each Owner's Percentage Ownership Interest;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Units that have not been taken based on a fraction, the numerator of which shall be the square footage of such Owner's Unit, and the denominator of which shall be the total square footage of all remaining Units within the Project;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association reasonably determines to be equitable under the circumstances;



(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article VIII, or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit, or other party, to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceedings.

8.4.2 Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Management Committee, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights shall terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Management Committee, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section VIII 4.B (including a possible reallocation of voting rights); provided, however, that if any such determination shall have been or such action is taken by judicial decree, the Management Committee shall defer thereto and proceed in accordance therewith.

8.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

## ARTICLE 9

### TERMINATION

9.1 **Required Vote.** Except as otherwise provided in Article VII, Article VIII, and Article XII, Section 3 the Project may be terminated only by agreement of the Owners with at least sixty-seven percent (67%) of the Voting Rights within the Association and approval of such termination by Eligible Mortgagees who are the holders of Mortgages which encumber Units to which at least sixty-seven percent (67%) of the total Voting Rights are appurtenant. Any such termination shall be completed through a termination agreement as provided below.

9.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ramifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.

9.3 **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale, which terms must be sufficient to pay in full the proceeds of all Mortgages held by Eligible Mortgagees based on an appropriate and equitable allocation of net sale proceeds to each respective Unit. Following a vote of termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder; provided, however, that their lien shall then be enforced only upon an undivided tenant in common interest in the real property described on Exhibit A in a percentage equal to the Percentage Ownership Interest appurtenant to such Unit as set forth on Exhibit C.

9.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Section 1 and 2 of this Article. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit and Condominium. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest, remain liable for all assessments and other obligations imposed on Owners by this Declaration.

9.5 **Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear based on an appropriate and equitable allocation of net sale proceeds. Such proceeds shall be disbursed to Owners based upon such allocation and taking into account any and all Mortgages which encumber such Owner's interest as of the date of sale.

## ARTICLE 10

### GENERAL USE RESTRICTIONS

10.1 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonableness, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

10.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominiums.

10.3 **Use of Units and Condominiums.** All Units are improved with Condominiums and are restricted to such use. Each Condominium shall be used only as a single-family residence. No Unit or Condominium shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Condominium, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

10.4 **Exception for Declarant.** Notwithstanding the restrictions contained in this Article X, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Unit or Condominium owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Declarant shall have the right to maintain one or more sales offices and model Condominiums. Such offices and model Condominiums may be located in any Condominium owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property or within the Project. Declarant shall have the right from time to time to relocate any of its sales offices, model Condominiums, signs, banners or similar devices.

#### 10.5 **Leases.**

10.5.1 **Leases Subject to Declaration.** Any lease, rental, or other occupancy agreement between an Owner and a lessee, tenant, or occupant respecting a Unit or Condominium shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a

default under the lease. All such agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit or Condominium. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

10.5.2 Restrictions on Leasing. Any Owner must receive prior written approval from the Management Committee (which may be withheld in the Management Committee's discretion as provided below) in the event (i) an Owner of a Unit does not use his/her Unit as such Owner's primary residence, and (ii) such Owner intends to rent, lease, or otherwise cause or allow any other person or entity to occupy or use such Owner's Unit (a "Non-Owner Occupant"). No Non-Owner Occupant shall be allowed to use or occupy a Unit without such Management Committee approval. The Management Committee may withhold its approval (i) if the Owner of the Unit is not then current in paying all assessments or other charges to the Association, (ii) if more than twenty five (25%) of the Units within the Project are already occupied or used by other Non-Owner Occupants, or (iii) for any other reason deemed reasonable by the Management Committee. Any agreement of any kind (whether written or oral) between an Owner and a Non-Owner Occupant that does not have written approval of the Management Committee shall be null and void. Any Owner that causes or allows a Non-Owner Occupant to occupy or use such Owner's Unit without such Management Committee approval shall be in default of this Declaration. The foregoing restrictions on leasing set forth in this paragraph do not apply to the Declarant and the Declarant may freely rent, lease, or otherwise cause or allow any Non-Owner Occupant to occupy or use any Unit or Units owned by Declarant without the need for any Management Committee approval.

10.6 Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation and maintenance of utilities are also reserved within each Unit and Condominium. It is contemplated that telephone, gas, electricity and other utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such utilities is reserved to the Association and to all utility supplies.

10.7 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the property, and no odors shall be permitted to arise therefrom so as to render any part of the property unsanitary or unsightly or which would be offensive or detrimental to any other part of the property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the property so as to be offensive or detrimental to any other part of the property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the property without the prior written approval of the Management Committee.

10.8 Temporary and Other Structures. No structures of a temporary nature, trailer, basement house, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all Condominiums erected and maintained on Units or within the property shall be new construction of good quality, workmanship and material.

10.9 **Unsightly Articles.** No unsightly articles shall be permitted to remain on or near a Unit (or within the Project) so as to be visible from any other Unit, the Limited Common Areas or the Common Areas. Without limiting the generality of the foregoing, trailers motor homes, recreational vehicles, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, all terrain vehicles and snowmobiles shall not be stored, kept or maintained on the Property. In addition, all automobiles, motorcycles, and trucks (or other permitted vehicles) parked on the Property shall be in good working order and shall parked only in designated or actual parking stalls. Refuse, garbage and trash shall be kept at all times within the interior of the Units or within the designated trash receptacles in the Project. Service areas, storage piles, and facilities for hanging, drying or airing clothing or household fabrics shall be permitted outside any Unit where it is visible from any other Unit the Limited Common Areas or the Common Areas. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate around any Unit. All patio areas shall be maintained by the applicable Unit Owner in good and clean condition at all times and no articles or items may be stored on or within the patio areas except for patio furniture which shall be kept in good condition and repair at all times.

10.10 **No Further Subdividing.** No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit or Condominium to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

10.11 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Management Committee, except such signs as may be used by Declarant in connection with the development of the project and the sale of Condominiums and/or Units and, except such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit or Condominium for sale or lease (which shall be limited in number to one sign per Unit). Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. Numbers on residences shall be located in the same position as originally constructed by Declarant and any replacement of such numbers shall be with numbers of the same, design, style, texture, color, and material as the original numbers unless prior written consent to a change in same has been received from the Management Committee.

10.12 **No Hazardous Activities.** No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires no incinerators shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

10.13 **Repair of Buildings.** No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

10.14 **Improvements and Alterations.** There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any Condominium or other improvement within the Property without the prior written approval of the Management Committee (and, if applicable as set forth herein, an affirmative vote by Owner's holding a requisite amount of the of the Voting Rights within the Association).

10.15 **Rooftop Antennas and Satellite Dishes.** Except as may be installed by Declarant, or except as may be approved by the Management Committee pursuant to Section 16 of this Article, no (i) television, ham radio, citizens band or radio antenna, or (ii) satellite dishes of any kind, shall be permitted upon the rooftop, exterior, patio, deck, or side of any Unit. Any authorized antenna or satellite dish shall require appropriate screening

10.16 **Architectural Control.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Management Committee in its sole discretion. In connection with such approval, the Management Committee shall have the option to create rules and regulations in its sole discretion related to such architectural control which, if created, shall be applied uniformly to all Units and Owners within the Project.

10.17 **General Obligations.** Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

## ARTICLE 11

### MORTGAGE PROTECTION

11.1 **Notice of Action.** Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Condominium, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

A. Any condemnation, loss or any casualty loss which affects a material portion of the Project, or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

D. Any proposed action which would require time consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

11.2 **Matters Requiring Prior Eligible Mortgagees Approval.** Except as provided elsewhere in this Declaration, the prior written consent of Owners holding at least sixty-seven percent (67%) of all the Voting Rights within the Association (unless pursuant to a specific provision of this Declaration in which the consent of Owners holding a greater percentage of the Voting Rights in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) redefinition of any Unit boundaries;
- (ii) convertibility of Units into Common Areas or vice versa;
- (iii) hazard or fidelity insurance requirements;
- (iv) imposition of any restrictions on Owner's right to sell or transfer his or her Unit or Condominium;
- (v) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee;
- (vi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (vii) any provision that expressly benefits Mortgagees, insurers, or guarantors.

Any Mortgage, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

11.3 **Availability of Project Documents and Financial Statements.** The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for

inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

The Association shall make an audited financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end.

11.4 **Subordination of Lien.** The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtain title, shall be collected or enforced by the Association from or against a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

11.5 **Payment of Taxes.** In the event any taxes or other charges which may or have become alien on the Common Areas are not timely paid, or in the event the required hazard insurance described in paragraph A of Section 4 of Article VI lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

11.6 **Priority.** No provision of this Declaration or the articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

11.7 **Limitations on First Mortgagee's Rights.** Notwithstanding any language to the contrary herein, no requirement for approval or consent by a Mortgagee provided in this Article shall operate to:

A. Deny or delegate control over the general administrative affairs of the Association by the Owners or the Management Committee;

B. Prevent the Association or the Management Committee from commencing, intervening and/or settling any legal proceeding; or

C. Prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article XIII above.



## ARTICLE 12

### MISCELLANEOUS

#### 12.1 Notices.

12.1.1 Notices to Owners. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

12.1.2 Notices to the Association. Any notice required or permitted to be given to the Association shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as the registered agent for the Association in the proper filings of the Articles of Incorporation for the Association, as may be changed or amended from time to time. The current notice address is:

Birch Estates Condominiums Association  
6440 South Wasatch Blvd. #200  
Salt Lake City, UT 84121

In the event Declarant owns all or any Units at the time any notice is received by the Association, the Association shall immediately deliver a copy of such notice to Declarant.

12.2 Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless Owners holding at least seventy-five percent (75%) of the Voting Rights (defined below) within the Association vote to terminate this Declaration at any vote or election held within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

12.3 Amendment. Notwithstanding anything stated herein to the contrary, Declarant shall have the right to amend, revise, and modify this Declaration at any time without any additional approvals necessary until the time that nineteen (19) Units are constructed and sold. Once nineteen (19) Units have been constructed and sold, except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of Owners holding at least seventy-five percent (75%) of the Voting Rights within the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of the Declaration, or by any federally chartered lending institution as a condition precedent to lending

funds upon the security of any Unit(s) or any portions thereof (including, without limitation, as may be necessary to qualify for any VA or FHA loans or loan programs). Any such amendment shall be effected by the recordation by Declarant of an amendment duly signed by or on behalf of the authorized officers or managers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning, development and sale of nineteen (19) of the twenty nine (29) Units. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within ten (10) years from the date of recording the Declaration, and so long as the Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Unit.

12.4 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against any Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

12.5 **Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

12.6 **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to affect all of its purposes.

12.7 **Covenants to Run With Land.** This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit or Condominium shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.8 **Lists of Owners and Eligible Mortgagees.** The Management Committee shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address

of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised.

12.9 **Interpretation of the Declaration.** Except for judicial construction, the Association, by its Management Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

12.10 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof

12.11 **Disclaimer of Representations.** Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Project can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, that such use will continue in effect.

12.12 **Reference to Declaration and Deeds.** Deeds to and instruments affecting any Unit or any other part of the Project may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

12.13 **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

12.14 **Captions and Titles**. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

12.15 **Exhibits**. All exhibits attached to this Declaration are a part of, and are incorporated into this Declaration.

12.16 **Governing Law**. This Declaration shall be governed by and construed in accordance with Utah law.

12.17 **Effective Date**. This Declaration and any amendment or supplement hereto shall take effect upon its being recorded in the office of the County Recorder of Salt Lake County, Utah.

[SIGNATURES TO FOLLOW]

BIRCH ESTATES CONDOMINIUMS, LLC,  
a Utah limited liability company

By: David Gilbert  
Name: David Gilbert  
Its: Manager

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SL                    )

On this 29<sup>th</sup> day of Oct, 2007, personally appeared before me David Gilbert, who being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as Manager of BIRCH ESTATES CONDOMINIUMS, a Utah limited liability company.

[Signature]  
NOTARY PUBLIC



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Beginning at a point that lies North 00°11'03" East 341.14 feet along the East line of 900 East Street from the Southwest corner of Lot 2, Block 21, 10 Acre Plat A, Big Field Survey and running thence North 00°11'03" East 233.29 feet along said East line; thence South 89°59'00" East 242.35 feet; thence South 00°11'03" West 233.29 feet; thence North 89°59'00" West 242.35 feet to the point of beginning. Property contains 1.298 acres more or less.

Also being described as follows:

Beginning at a point that lies North 00°11'03" East 341.14 feet along the East line of 900 East Street from the Southwest corner of Lot 2, Block 21, 10 Acre Plat A, Big Field Survey and running thence North 00°11'03" East 233.29 feet along said East line to the Southwest corner of Grape Ivy Place Phase 2, according to the official plat thereof; thence South 89°59'00" East 242.35 feet along the South lines of said Grape Ivy Place Phase 2 and Grape Ivy Place, according to the official plat thereof to the West line of Millwheel Acres Subdivision, according to the official plat thereof; thence South 00°11'03" West 233.29 feet along said West line; thence North 89°59'00" West 242.35 feet to the point of beginning. Property contains 1.298 acres more or less.

- POOR COPY -  
CO. RECORDER

**EXHIBIT B**

**PLAT**

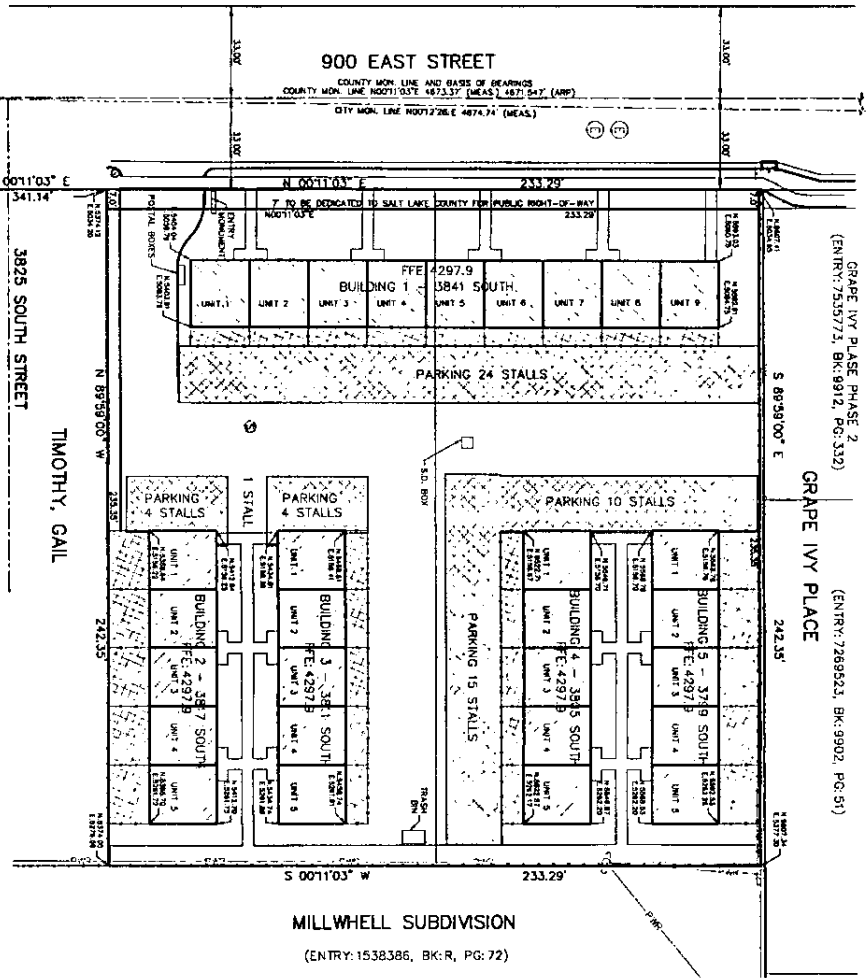
See Attached.

(N 54°00' 23.17")  
S 10° 00' 00" 00" W  
3300 SOUTH & 900 EAST  
(NOT PLANNED)

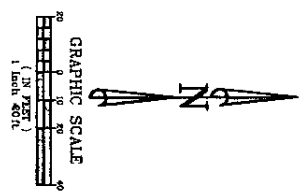
GRAPE IVY PLACE, PHASE 2  
(ENTRY: 7535773, BK: 9912, PG: 332)

GRAPE IVY PLACE  
(ENTRY: 7269923, BK: 9902, PG: 51)

**BIRCH ESTATES CONDOMINIUMS**  
PART OF LOT 8, BLOCK 21, 10 - JUNE PLAT "C"  
OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 1 EAST,  
SALT LAKE COUNTY, UTAH



MILLWELL SUBDIVISION  
(ENTRY: 1538586, BK: R, PG: 72)



NUMBER EASE-CD  
ACCOUNT  
SHEET  
OF 2 SHEETS

**CREATED FOR RECORD COMPLIANCE**  
DATE: \_\_\_\_\_  
SALT LAKE COUNTY ZONING

**PLANNING AND DEVELOPMENT SERVICES**  
DATE: \_\_\_\_\_  
DEPARTMENT: BOT

**UTILITY STREET AND ADDRESS**  
DATE: \_\_\_\_\_  
ENGINEERING REVIEW REQUEST

STATE OF UTAH  
RECORDED AND FILED IN THE OFFICE OF THE CLERK OF THE COUNTY OF SALT LAKE  
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, AT \_\_\_\_\_ PM  
CLERK OF COUNTY RECORDS

**Bird & Associates, LLC**  
Engineers & Land Surveyors  
900 South Main Street  
Bountiful, Utah 84002  
Phone: (801)-292-0400  
Fax: (801)-292-8218

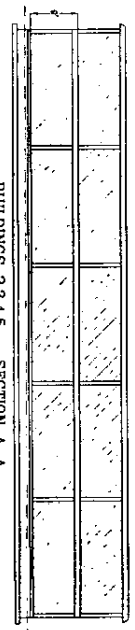
**AGREEMENT**  
STATE OF UTAH  
COUNTY OF \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**ADMINISTRATIVE**  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

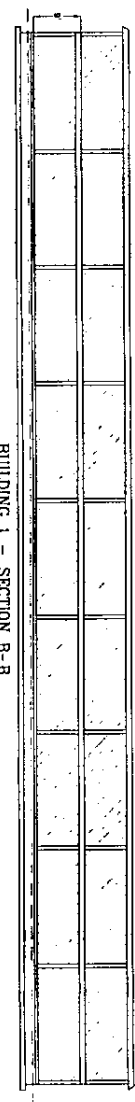
**BOUNDARY DESCRIPTION**  
Beginning at a point that has North 00°11'03" East 233.29' feet along the East line of 900 East Street from the Southwest corner of Lot 2, Block 21, 10 - June Plat "C", Big Bend Survey and thence North 00°11'03" East 233.29' feet along the East line of the Southwest corner of the 100' x 100' lot 2, Block 21, 10 - June Plat "C", Big Bend Survey and thence North 00°11'03" East 233.29' feet to the point of beginning. Property corners 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 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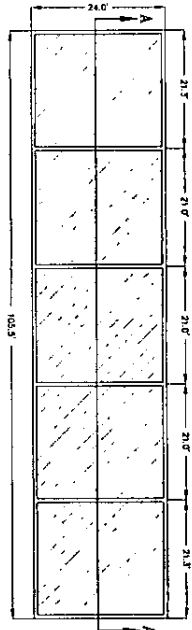
**BIRCH ESTATES CONDOMINIUMS**  
 PART OF LOT 2, BLOCK 21, 10 - AREA PLAT "A"  
 AND THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 1 EAST,  
 SALT LAKE BASE AND MERIDIAN



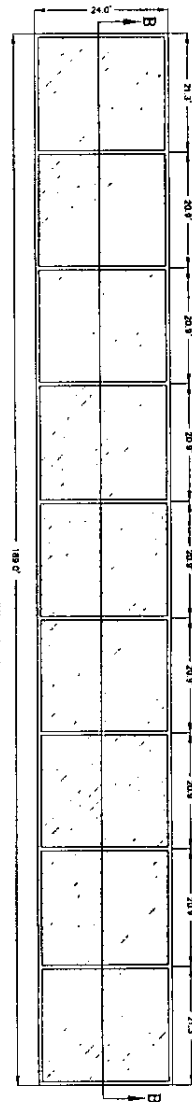
BUILDINGS 2345 - SECTION A-A



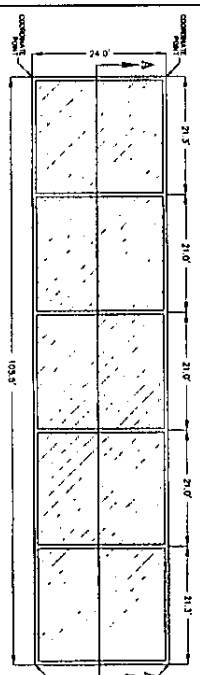
BUILDING 1 - SECTION B-B



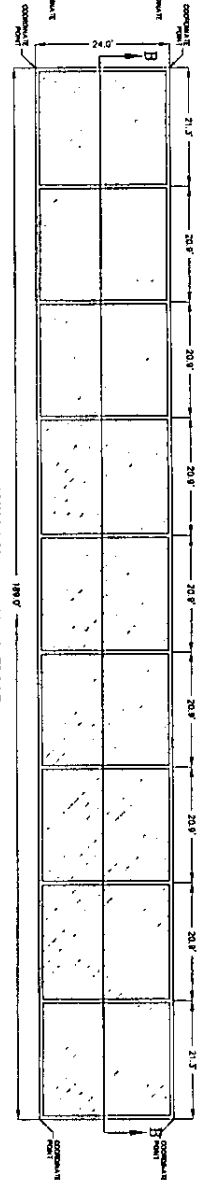
BUILDINGS 2345 - UPPER FLOOR



BUILDING 1 - UPPER FLOOR



BUILDINGS 2345 - MAIN FLOOR



BUILDING 1 - MAIN FLOOR



DESIGN AND  
 RECORD BY  
 ADRIAN MARCH  
 D.P.E. INC. 23, 2002

**B**ird & Associates LLC  
 Engineers & Land Surveyors

505 South Main Street  
 Bountiful, Utah 84010  
 Phone (801)-282-0400  
 Fax (801)-282-0218

**BIRCH ESTATES CONDOMINIUMS**  
 SHEET 2 OF 2

SALT LAKE COUNTY RECORDS  
 DATE RECORDED: \_\_\_\_\_  
 IN BOOK \_\_\_\_\_ OF OFFICIAL RECORDS PAGE \_\_\_\_\_

SALT LAKE COUNTY RECORDER  
 BY: \_\_\_\_\_

**EXHIBIT C**

**PERCENTAGE OWNER INTEREST**

UNIT NUMBER FROM PLAT	SQUARE FOOTAGE OF EACH UNIT	PERCENTAGE OF OWNERSHIP INTEREST IN COMMON AREAS ALLOCATED TO EACH UNIT
Building 1 3841 S. Unit 1	1,000	3.448%
Building 1 3841 S. Unit 2	1,000	3.448%
Building 1 3841 S. Unit 3	1,000	3.448%
Building 1 3841 S. Unit 4	1,000	3.448%
Building 1 3841 S. Unit 5	1,000	3.448%
Building 1 3841 S. Unit 6	1,000	3.448%
Building 1 3841 S. Unit 7	1,000	3.448%
Building 1 3841 S. Unit 8	1,000	3.448%
Building 1 3841 S. Unit 9	1,000	3.448%
Building 2 3817 S. Unit 1	1,000	3.448%
Building 2 3817 S. Unit 2	1,000	3.448%
Building 2 3817 S. Unit 3	1,000	3.448%
Building 2 3817 S. Unit 4	1,000	3.448%
Building 2 3817 S. Unit 5	1,000	3.448%
Building 3 3811 S. Unit 1	1,000	3.448%
Building 3 3811 S. Unit 2	1,000	3.448%
Building 3 3811 S. Unit 3	1,000	3.448%
Building 3 3811 S. Unit 4	1,000	3.448%
Building 3 3811 S. Unit 5	1,000	3.448%
Building 4 3805 S. Unit 1	1,000	3.448%
Building 4 3805 S. Unit 2	1,000	3.448%
Building 4 3805 S. Unit 3	1,000	3.448%
Building 4 3805 S. Unit 4	1,000	3.448%
Building 4 3805 S. Unit 5	1,000	3.448%
Building 5 3799 S. Unit 1	1,000	3.448%
Building 5 3799 S. Unit 2	1,000	3.448%
Building 5 3799 S. Unit 3	1,000	3.448%
Building 5 3799 S. Unit 4	1,000	3.448%
Building 5 3799 S. Unit 5	1,000	3.448%
<b>TOTALS</b>	<b>29,000</b>	<b>100%</b>

**Rules and Regulations  
for the Birch Estates Condominiums Association**

1. The Birch Estates Condominiums development is private property and is for the exclusive use of Birch Estates Condominiums Association and its members and guests.
2. Smoking in any form is strictly prohibited within 25' of the perimeter of any building or within 25' of the perimeter of the play area, including without limitation, within any condominium units and patios (both indoors and outdoors).
3. The consumption of alcoholic beverages is strictly prohibited in the common areas.
4. Any and all illegal activities, including without limitation, the selling, using, making or distributing of illegal drugs, is strictly prohibited within the development.
5. Up to two (2) small (less than 20 lbs.) household pets are allowed. Pets must be kept on leashes at all times while such pets are outside any condominium unit. All defecation and waste from any such pet must be picked up, cleaned and removed by pet owners or the person in control of the pets. No pets shall be allowed to roam free within the development.
6. Parking is limited to residents, occupants or guests of the development.
7. Residents, occupants and guests may not make or permit loud, disturbing or objectionable noise of any kind. Without limiting the generality of the foregoing, (i) while in any common areas, radios, stereos, cassette and compact disc players, and other audio devices must be used with headphones so as not to disturb other nearby residents, occupants and guests of the development, and (ii) while inside any condominium unit, radios, stereos, cassette and compact disc players, and other audio devices must be played at a volume so as not to disturb other residents, occupants or guests of the development.
8. Association activities and/or events shall have priority use of the common areas.
9. Any and all common sidewalks, driveways or parking areas, may not be obstructed or used by any resident, occupant or guest as a play area or for any other purpose than ingress or egress.
10. No decorations or personal items may be kept or displayed in the common areas. Unobtrusive seasonal (within two weeks of major holidays) decorations shall be allowed on front doors and patios, provided such decorations do not infringe on the quiet enjoyment of other units.
11. All patios must be kept in a clean and orderly fashion.
12. One or more trash receptacles and/or dumpsters are located throughout the development. All residents, occupants and guests shall keep the development clean by placing all household trash in the proper receptacles and/or dumpsters. All dumpsters are to be used for household trash only. Residents, occupants and guests are responsible for removal of any other items or

trash from the development, i.e. discarded furniture, water heaters, air-conditioning systems, etc.

13. Skateboards, roller blades, scooters and other such belongings are not allowed to be used in, or around the common areas of the development (including on any sidewalks).
14. No motorized vehicles are allowed on any path or walkway with the exception of motorized wheelchairs. No parking is permitted within any common areas except as provided for in the parking lot areas and within the striped parking stalls.
15. Disorderly conduct of any kind (as determined in the sole discretion of the management committee of the Association) is strictly prohibited within the development. Disorderly Conduct may include, but is not limited to, the following:
  - Threatening, profane, indecent, coercive or disrespectful actions, gestures, words or language to any property manager (or employees of same), any contractors or workers, or other residents, occupants or guests of the development.
  - Fighting (verbal or physical) or scuffling.
  - Possession of a weapon in the common areas (including the pool area) unless by an on-duty law enforcement officer or other persons with specific written authority from the management committee for security purposes.
  - Loitering within the development.
  - Theft or attempt to remove equipment, personal property or other items belonging to some other resident, occupant, guest, the property manager or any other person
  - Damage or vandalism to of any kind while in the common areas.
  - Failure to obey posted safety rules.
  - Committing illegal or criminal acts in violation of state, local, or federal laws or regulations.
  - Actions or activities that annoy, inconvenience, or endanger the well being of persons and/or property.
17. No offensive odors shall be allowed to emanate from any units.

**Bylaws  
of  
Birch Estates Condominiums Association**

**As Adopted**

**October \_\_\_\_, 2007**

**Bylaws of  
Birch Estates Condominiums Association**

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**Bylaws of  
Birch Estates Condominiums Association**

**ARTICLE I – PURPOSES**

**Section 1.01 Purpose.** This corporation is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, as set forth in the corporation's Articles of Incorporation, including, without limitation, (i) to provide for the management, operation, maintenance, preservation, and control (including architectural control) of the condominium units (the "Units") and any common areas (hereafter, the "Properties") within the Birch Estates Condominiums Association, a planned condominium unit development, located in Salt Lake County, Utah, as the same may be constituted from time to time; (ii) to promote the health, safety and welfare of the Members and other residents and occupants within the Properties; and (iii) for other purposes not for profit.

**ARTICLE II – OFFICES**

**Section 2.01 Offices.** The principal office of the corporation may be located at any place, either in or outside the State of Utah, as designated in the corporation's most current Annual Report filed with the Utah Division of Corporations and Commercial Code. The corporation may have such other offices, either in or outside the State of Utah, as the Management Committee may designate or as the business of the corporation may require from time to time. The corporation shall maintain at its principal office a copy of certain records, as specified in Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act. The initial address of the corporation's principal office shall be 6440 South Wasatch Blvd. #200, Salt Lake City, Utah, 84121.

**Section 2.02 Registered Office.** The registered office of the corporation, required by Section 16-6a-501 of the Utah Revised Nonprofit Corporation Act, shall be located in the State of Utah and may be, but need not be, identical with the corporation's principal office (if located in the State of Utah). The address of the registered office may be changed from time to time.

**Section 2.03 Definitions.** Any capitalized terms used in these Bylaws which are not defined shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements of the Birch Estates Condominiums, recorded in the official records of the Salt Lake County Recorder on \_\_\_\_\_, 2007, as instrument no. \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_ (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "**Declaration**"), unless the context indicates otherwise.

### **ARTICLE III – MEMBERS**

**Section 3.01 Membership.** The qualifications, privileges and obligations of membership in the Association shall be as set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

**Section 3.02 Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Management Committee either within the Project or as convenient thereto as possible and practical.

**Section 3.03 Annual Meetings.** Annual meetings of the Association shall be held during the month of January or February in each year on a date and at a time set by the Management Committee.

**Section 3.04 Special Meetings of Membership.** The President (as defined below) may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Management Committee or upon a petition signed by Members representing at least twenty percent (20%) of the total Voting Rights of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as expressly stated in the notice.

**Section 3.05 Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meetings of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than twenty (20) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary (as defined below) or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as expressly stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's then-current address as it appears on the records of the Association, with postage thereon prepaid.

**Section 3.06 Waiver of Notice.** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or its proxy shall be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 3.07 Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are represented at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than sixty (60) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 3.08 Voting.** The Voting Rights of the Members shall be as set forth in the Declaration, and such Voting Rights provisions are specifically incorporated herein.

**Section 3.09 Proxies.** At all meetings of the Members, Members may vote in person or by proxy and, in the case of a Member which is a corporation, partnership or other legal entity, such Member shall vote by proxy. Every proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Except as otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than six (6) months after its execution unless otherwise expressly provided in the proxy. Regardless of the language set forth in any written proxy, every proxy shall be revocable at any time and shall automatically cease upon conveyance of the Member's Unit. Proxies shall be valid even if presented in facsimile form.

**Section 3.10 Majority.** As used in these Bylaws, the term "majority" shall mean those Voting Rights, owners, Members, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

**Section 3.11 Quorum.** Except as otherwise expressly provided in these Bylaws, the requirements or provisions for a quorum with respect to any meeting or any vote of the Association or its Members shall be as set forth in the Declaration. If the required quorum is not present, additional meetings may be called pursuant to the terms of the Declaration. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 3.12 Conduct of Meetings.** The President shall preside at all meetings of the Association, and the Secretary or designated managing agent shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 3.13 Action Without a Meeting.** Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by Members with the requisite amount of Voting Rights with respect to the subject matter thereof, and any such consent shall have the same force and effect if a meeting had occurred and a vote by an appropriate quorum had been properly taken.

#### ARTICLE IV – MANAGEMENT COMMITTEE

**Section 4.01 General Powers.** The business and affairs of the corporation shall be managed under the direction of its Management Committee, each member of which shall have one (1) vote.

**Section 4.02 Declarant Control.** The Declarant shall have the sole and exclusive right to appoint and remove all Management Committee members (and their respective offices) consistent with the Declaration, the Articles, and these Bylaws, until the first to occur of: (i) three (3) years from the date on which the first Unit in the Project is conveyed by Declarant to a person(s) or entity(ies) not affiliated with Declarant; or (ii) the date on which the nineteenth (19th) Unit is conveyed by Declarant to a person(s) or entity(ies) not affiliated with Declarant. Thereafter, the responsibility for electing the Management Committee of the Association shall be turned over to the Members of the Association.

**Section 4.03 Number and Election of Members.** The Management Committee shall consist of three (3) members. After Declarant's right to appoint the members of the Management Committee terminates as set forth above, the Owners of the Units shall elect the members of such committee. Only Owners that are current in the payment of all assessments (or agents or officers of such Owners) at the time of such Owners' election may serve as members of the Management Committee. Commencing at the first annual meeting after the Declarant's right to appoint the members of the Management Committee terminates, the Owner's shall elect successors to the Management Committee members appointed by Declarant. At such annual meeting in which the Owners elect successors to Declarant's appointed Management Committee members, two (2) of the Management Committee members shall be elected to serve two (2) year terms (the President and Vice President) and one (1) of the Management Committee member shall be elected to serve a one (1) year term (the Secretary). Thereafter, all members of the Management Committee will each serve as a member for a term of two (2) years; provided, however, such members shall continue to hold office until a replacement or successor to such member is elected. Subject to the terms and conditions of set forth below, each member of the

Management Committee shall be elected at succeeding annual meetings at the expiration of such member's term.

**Section 4.04 Removal or Termination of Members of the Management Committee.**

Members of the Management Committee may be removed or terminated as members of such committee under any of the following circumstances:

(i) A member shall automatically be terminated as a member of the Management Committee if such member resigns, dies or ceases to be an Owner of any portion of any Unit (whether through (a) a sale, transfer, or conveyance of such member's right, title and interest, all of such member's ownership interest, (b) a foreclosure, or sale in lieu of foreclosure, by any Mortgagee, or (c) or any other means);

(ii) A member may be removed as a member of the Management Committee: (a) upon the vote of a majority of the other members of the Management Committee if such member fails to pay any assessment due from such Owner within the time periods set forth in the Declaration for payment of same; (b) upon the vote of a majority of the other members of the Management Committee if such member misses more than three (3) consecutive regularly scheduled meetings of the Management Committee (of which meetings such member received proper notice); (c) at any time upon a vote by the Owners holding a majority of the Voting Rights within the Association.

**Section 4.05 Replacement of Members of the Management Committee.** A vacancy on the Management Committee created by the termination, removal, resignation or death of a member of such committee shall be filled by an Owner that otherwise meets the requirements set forth in Section 4.03 above that is appointed by a majority vote of the other members of the Management Committee; provided, however, that such new member of the Management Committee shall only serve until the next annual meeting of the Owners at which time there shall be an election for a new member of the Management Committee.

**Section 4.06 Resignation.** Any member of the Management Committee may resign at any time by giving written notice to the corporation. A resignation is effective when the notice is received by the corporation unless the notice specifies a later effective date.

**Section 4.07 Regular Meetings.** Regular Meetings of the Management Committee may be held at such time and place as shall be determined from time to time by a majority of the members of the Management Committee, but at least four (4) such meetings shall be held

during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Management Committee members not less than fifteen (15) days prior to the meeting; provided, however, notice of a meeting need not be given to any member of the Management Committee who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 4.08 Special Meetings.** Special meetings of the Management Committee shall be held when called by written notice signed by either (i) the President of the Association, or (ii) the Vice President (as defined below) and Secretary (as defined below) acting together. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Management Committee member by one of the following methods: (a) by personal delivery, (b) written notice by first class mail, postage prepaid, (c) by telegram, charges prepaid, or (d) by telephone communication, either directly to the Management Committee member or to a person at the Management Committee member's office or home who would reasonably be expected to communicate such notice promptly to the Management Committee member (provide such telephone communication is followed up immediately with one of the other methods of communicating notice as set forth in (a), (b) or (c)). All such notices shall be given at the Management Committee member's telephone number or sent to the Management Committee member's address as shown on the records of the Association. Notices shall be deemed delivered either (i) at the time of personal delivery of any notice (if personally delivered), (ii) at the time any notice is dropped in the mail (if sent by first class mail), (iii) at the time any telegram is sent (if sent via telegram), or (iv) at the time any telephone communication is made (or at the time any message is left), provided, as set forth above, another method of notice is immediately provided.

**Section 4.09 Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if consent in writing, setting forth the action so taken, is signed by all of the members of the Management Committee. Such consent has the same force and effect as a unanimous vote of the members of the Management Committee. Action taken under this provision is effective at the time the last Management Committee member signs a writing describing the action taken, unless, prior to that time, any Management Committee member has revoked a consent by a writing signed by the Management Committee member and received by the Secretary or any other person authorized by these Bylaws or the Management Committee to receive the revocation, or unless the consent specifies a different effective time.

**Section 4.10 Waiver of Notice.**

(a) Written Waiver. Any member of the Management Committee may waive notice of any meeting before or after the date and time of the meeting stated in the notice. Except as provided in subsection (b), below, the waiver must be in writing and signed by the member of the Management Committee entitled to notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.

(b) Waiver by Attendance. The attendance of a member of the Management Committee at or participation in a meeting waives any required notice to such Management Committee member of the meeting unless such member at the beginning of the meeting, or promptly upon such member's arrival, objects to the holding of the meeting or the transacting of business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

**Section 4.11 Quorum.** At all meetings of the Management Committee, a majority of the members of the Management Committee shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Management Committee (whether or not all such members are present) shall be necessary to pass any action or to constitute any decision of the Management Committee. If any meeting of the Management Committee cannot be held because a quorum is not present, any member or members of the Management Committee who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 4.12 Manner of Acting.** The act of a majority of the members of the Management Committee is the act of the Management Committee. Voting by proxy in connection with any Management Committee vote is not permitted.

**Section 4.13 Meetings by Telecommunication.** The Management Committee may permit any or all members of the Management Committee to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members of the Management Committee participating may hear each other



during the meeting. A member of the Management Committee participating in a meeting by this means is considered present in person at the meeting.

**Section 4.14 Powers and Duties.** The Management Committee shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are provided by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Management Committee, to the extent not expressly contrary to the Declaration, shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, by way of explanation, but not limitation:

- (a) preparation and adoption, in accordance with the Declaration, of annual budgets;
- (b) making assessments to defray the Association's expenses as more fully set forth in the Declaration;
- (c) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and any other property for which it has responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (d) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided, any reserve fund may be deposited, in the Management Committee members' best business judgment, in depositories other than banks;
- (e) making and amending rules and regulations;
- (f) opening of bank accounts on behalf of the Association and designating the signatories required;

- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the property of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners or Members concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;
- (k) keeping books with detailed amounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred,
- (l) making available to any prospective purchaser of a Unit, any Owner of a Unit, and the holders, insurers, and guarantors of mortgages or deeds of trust on any Unit, current copies of the Declaration, the Articles, the Bylaws, rules and all other books, records, and financial statements of the Association, to the extent reasonable;
- (m) permitting utility suppliers to use portions of the Association's property, if any, as reasonably necessary to the ongoing development or operation of the Properties;
- (n) indemnifying a member of the Management Committee, officer or other committee member, or former member of the Management Committee, officer or other committee member of the Association to the extent such indemnity is required by Utah law, the Articles or the Declaration; and
- (o) employing a professional property manager to carry out its duties under the Declaration, these Bylaws and any rules and regulations.

Notwithstanding the foregoing, as set forth in the Declaration, the Management Committee may not act on behalf of the Association to: (a) amend the Declaration; (b) terminate the Association, the Declaration or the Project; (c) elect members to the Management Committee (except the Management Committee may appoint members as specifically provided in Section 4.05 above); or (d) determine the qualifications, powers and duties, or terms of office, of members of the Management Committee.

**Section 4.15 Management.** The Management Committee may, at its option, retain for the Association a professional property manager at a compensation established by the Management Committee to perform such duties and services as the Management Committee shall authorize. The Management Committee may delegate to the property manager, subject to the Management Committee's supervision, all of the powers granted to the Management Committee by these Bylaws, other than the powers set forth in subparagraphs (b), (e), (f), (h), (m), (n) and (o) of Section 4.14 above.

**Section 4.16 Accounts and Reports.** The following management standards of performance shall be followed unless (i) otherwise required under applicable law, (ii) otherwise set forth in the Declaration, or (iii) otherwise specifically determined by a resolution of the Management Committee.

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Management Committee;

(f) financial reports shall be prepared for the Association at intervals as established by the Management Committee (but not less than annually) containing:

- (i) an Income Statement reflecting all income and expense activity for the preceding period on an accrual basis;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent; and

(g) an audit consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year, (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The audit referred to above shall be prepared by an independent certified public accountant.

**Section 4.17 Borrowing.** The Management Committee shall have the power to borrow for any legal purpose, provided, the approval of the Members of the Association holding at least fifty-one (51%) percent of the Voting Rights represented in person or by proxy at a duly constituted meeting shall be required in the event that the proposed borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or the Articles, no mortgage lien shall be placed on any portion of

the Association's property without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Association Voting Rights.

**Section 4.18 Rights of the Association.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other property owners' agreements with trusts, condominiums, and cooperatives, of other property owners or similar associations, both within and without the Properties. Such agreements shall require the consent of a majority of the Management Committee members.

**Section 4.19 Enforcement.** The Management Committee shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote and the Voting Rights for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder. In addition, the Association shall be entitled to suspend any services provided by the Association to the Owner or the Owner's Unit in the event that the Owner is more than thirty (30) days delinquent in paying any assessment. In the event that any occupant, guest or invitee of a Unit violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Management Committee, the Owner shall pay the fine upon notice from the Association. The failure of the Management Committee to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Management Committee to do so thereafter.

(a) **Notice.** Except as provided in subsection (c) below, prior to imposition of any sanction hereunder or under the Declaration, the Management Committee or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator or its representative may present a written request to the Management Committee for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Management Committee may, but shall not be obligated to suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension

shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Management Committee in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Management Committee member, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Management Committee, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

## ARTICLE V – OFFICERS

**Section 5.01 Number.** The three members of the Management Committee shall be the officers of the Association. At the time of any election of any member of the Management Committee, such Management Committee members shall be elected to specific offices. The three (3) officers of the Association shall be (i) President (the “President”), (ii) Vice President (the Vice President”), and (iii) Secretary – Treasurer (the “Secretary”).

**Section 5.02 Compensation.** Except to the extent approved by a vote of the requisite amount of Voting Rights by members of the Association, no compensation shall be provided to the officers or Management Committee members for their work or services; provided, however, such officers or Management Committee members may be reimbursed

for actual, reasonable out-of-pocket expenses and costs incurred in the performance of their respective duties.

**Section 5.03 The President.** The President shall be the chief executive officer of the corporation and, under the direction of the Management Committee, shall in general supervise and control all the business and affairs of the corporation. The President shall, when present, preside at meetings of the Management Committee. The President may hire, prescribe the duties of, and fire employees, and may delegate such authority in whole or in part to any other officer or employee. The President may sign, with the Vice President or Secretary, any deeds, mortgages, bonds, contracts, or other instruments which the Management Committee has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Management Committee or by these bylaws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of a president and such other duties as may be prescribed by the Management Committee from time to time.

**Section 5.04 The Vice President.** In the absence of the President, or in the event of the President's death, inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President may sign, with the President or Secretary, and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Management Committee.

**Section 5.05 The Secretary - Treasurer.** The Secretary shall (a) keep the minutes of the Management Committee's meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records; (d) maintain the records required under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, (e) have charge and custody of and be responsible for all funds and securities of the corporation; (f) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the other provisions of these Bylaws; (g) in general perform all duties incident to the office of a secretary and/or the office of a treasurer; and (h) such other duties as from time to time may be assigned to

him or her by the President or by the Management Committee. In the absence of the Secretary, the President shall perform these duties.

**Section 5.06 Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Management Committee.

#### Article VI – Committees

**Section 6.01 General.** The Management Committee, in its sole discretion, may create committees to perform or oversee certain tasks. Such committees and their individual members may be established and serve for any periods designated by a resolution adopted by a majority of the Management Committee members. Each committee shall operate in accordance with the terms of the resolution of the Management Committee designating the committee or with rules adopted by the Management Committee. Only Owners of Units within the Association who meet the eligibility requirements for Management Committee members set forth in Section 4.03 above may be members of other committees.

#### ARTICLE VII – INDEMNIFICATION

**Section 7.01 Indemnification.** The corporation shall indemnify each person who is or was a Management Committee member, officer, employee, or agent of the corporation or an individual who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another corporation or other person or of an employee benefit plan, to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act.

**Section 7.02 Authorization of Indemnification.** The corporation shall be deemed to have authorized such indemnification whenever as determination has been made under Section 16-6a-906 of the Utah Revised Nonprofit Corporation Act that indemnification of an individual is permissible in the circumstances because the person has met the applicable standard of conduct.



**Section 7.03 Advance of Expenses.** The corporation shall accept the undertaking required by Subsection 16-6a-904(1)(b) of the Utah Revised Nonprofit Corporation Act without reference to financial ability to make repayment.

**Section 7.04 Insurance.** The corporation may purchase and maintain liability insurance on behalf of a person who is or was a Management Committee member, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a Management Committee member, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a Management Committee member, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him or her against the same liability.

**Section 7.05 Savings Clause.** If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each officer and Management Committee member as to expenses, including attorneys' fees, judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether internal or external, including without limitation a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

**ARTICLE VIII – COVENANTS, CONDITIONS, RESTRICTIONS,  
RULES AND REGULATIONS FOR THE PROPERTIES**

**Section 8.01 Covenants, Conditions and Restrictions.** Use and maintenance of the Properties are governed and restricted by those certain covenants, conditions, restrictions and other provisions set forth in the Declaration.

**Section 8.02 Rules and Regulations.** In addition to the use and maintenance restrictions described in Section 8.01 above, the Management Committee may, in its sole discretion, at any time and from time to time, implement and enforce any other restrictions, rules and regulations for all or any portion of the Properties, including without limitation,

restrictions, rules and regulations relating to (i) the swimming pool, (ii) the common areas, (iii) smoking (inside any Units or outside in common areas), (iv) parking and parking areas, and (v) noise levels.

#### **ARTICLE IX – MISCELLANEOUS**

**Section 9.01 Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Management Committee. In the absence of a resolution, the fiscal year shall be the calendar year.

**Section 9.02 Parliamentary Rules.** Except as may be modified by Management Committee resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law, the Articles, the Declaration, or these Bylaws.

**Section 9.03 Conflicts.** If there are conflicts between the provisions of Utah law, the Articles, the Declaration, and these Bylaws, the provisions of Utah law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

#### **Section 9.04 Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Declaration and Bylaws, membership register books of account, and minutes of meetings of the Members, the Management Committee, and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by the duly appointed representative of any Member at any reasonable time and for a purpose reasonably related to his or her interest in a Unit at the office of the Association or at such other place within the Properties as the Management Committee shall prescribe.

(b) **Rules for Inspection.** The Management Committee shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) **Inspection by Management Committee Members.** Every Management Committee member shall have the absolute right at any time to inspect all books, records,

and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Management Committee member shall include the right to make extracts and a copy of relevant documents at the expense of the Association.

**Section 9.05 Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid;

(a) If to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no street address has been designated, at the address of the Unit of such Member; or

(b) If to the Association, the Management Committee, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

**Section 9.06 Amendment.** These Bylaws may be amended in accordance with the same procedures and manner as an amendment to the Declaration, including any and all unilateral rights of Declarant to amend the Declaration (and, in the same manner, these Bylaws).

**Secretary's Certificate**

I, THE UNDERSIGNED, being the secretary of Birch Estates Condominiums Association do hereby certify the foregoing to be the bylaws of such corporation, as adopted by written consent of its Management Committee dated as of October 29, 2007.

  
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David Gilbert, Secretary